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Attorneys for Plaintiff
Glacier Northwest, Inc.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

GLACIER NORTHWEST, INC.,

Plaintiff,

v.

CEMENTAID INTERNATIONAL
MARKETING, LTD.,

Defendant.

Case No. 2:18-cv-00556 TSZ

**AMENDED COMPLAINT FOR:
1) DECLARATORY JUDGMENT;
2) BREACH OF CONTRACT;
3) DECLARATORY JUDGMENT;
4) BREACH OF CONTRACT.**

DEMAND FOR JURY TRIAL

GENERAL ALLEGATIONS

Jurisdiction and Parties

1. This Court has original jurisdiction over this matter, pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the Plaintiff and the Defendant and there is more than \$75,000 in controversy.

2. Pursuant to the contract between the parties, as more fully described below, each of the parties explicitly consented to the jurisdiction of the United States District Court for the Western District of Washington.

3. Plaintiff, Glacier Northwest, Inc. (“Glacier Northwest”), is a corporation organized and existing under the laws of the State of Washington. Plaintiff Glacier Northwest is a wholly owned subsidiary of CalPortland Company, with a principal place of business in the State of California.

4. Defendant, Cementaid International Marketing Ltd. (hereinafter “Cementaid”), is a Hong Kong Company, with a principal place of business in Hong Kong, SAR, China. The contract between Glacier Northwest and Cementaid is written in English, the parties have conducted their business communications in English, and the attorney for Cementaid, who has recently communicated with counsel for Glacier Northwest, has done so in English. Glacier Northwest is informed and believes, and therefore alleges, that the senior executives of Cementaid are fluent in the English language. Therefore, Glacier Northwest will submit this Complaint for service, pursuant to the Hague Convention on Service of Process, in the English language.

5. The Parties entered into a written “Marketing and Material Supply Agreement” (“Agreement”) effective December 31, 2001. Pursuant to the Agreement Glacier Northwest was the exclusive distributor of certain concrete related products within a specified geographic area. As relevant herein, the list of products included Caltite and the geographic territory included California.

6. Central Concrete purchased Caltite, a waterproofing additive, from Glacier Northwest. Central Concrete used that product in various construction projects including one commonly known as Millennium Tower, which is located in

1 San Francisco, California and another commonly known as Axis, which is located in
2 San Jose, California.

3 **MILLENIU BACKGROUND**

4 7. Several lawsuits, related to the development of the Millennium Tower,
5 are now pending in the California Superior Court, for the County of San Francisco.
6 One of those lawsuits is entitled *Millennium Tower Association v. Mission Street*
7 *Development, LLC et al*, case number 17-557830. That lawsuit alleges numerous
8 problems with the condition of the Millennium Tower including, but not limited to,
9 water intrusion through foundation systems and slabs.

10 8. A cross-complaint was subsequently filed in that action by Webcor
11 Construction LP. Glacier Northwest is named as a cross-defendant in the Webcor
12 cross-complaint. Glacier Northwest is informed and believes that its only
13 relationship to Webcor, as it relates to the Millennium Towers, is the sale of
14 Cementaid's product to Central Concrete which subsequently utilized that product in
15 concrete work at the Millennium Tower.

16 9. Pursuant to the Agreement, Cementaid agreed to defend, indemnify and
17 hold Glacier Northwest harmless from and against any product liability claims related
18 to the Cementaid products.

19 10. On February 22, 2018, March 20, 2018, and March 22, 2018, Plaintiff
20 sent letters to Cementaid demanding that Cementaid honor its contractual obligation
21 to indemnify Glacier Northwest, but Cementaid has failed and refused to do so.
22 Recently an attorney for Cementaid has stated that formal service will be required
23 before Cementaid will respond to this lawsuit, further indicating that Glacier
24 Northwest reasonably determined that it would be required to incur the cost of
25 counsel in this matter in an effort to obtain the indemnification to which it is entitled
26 in this matter.

11. Glacier Northwest has been required to retain counsel to defend the Webcor cross-complaint, the cost of which has already exceeded the \$75,000 jurisdictional threshold for diversity jurisdiction and such damages are continuing and increasing.

AXIS BACKGROUND

12. A lawsuit, related to the development of Axis, is now pending in the California Superior Court, for the County of Santa Clara. The lawsuit is entitled *Axis Homeowners Association v. Almaden Tower Venture, LLC et al*, case number 17CV314037. The lawsuit alleges numerous problems with the condition of the Axis project including, but not limited to, water intrusion.

13. A cross-complaint was subsequently filed in that action by Webcor Construction LP. Glacier Northwest is named as a cross-defendant in the Webcor cross-complaint. Glacier Northwest is informed and believes that its only relationship to Webcor, as it relates to the Axis project, is the sale of Cementaid's product to Central Concrete which subsequently utilized that product in concrete work at the Axis project.

14. Pursuant to the Agreement, Cementaid agreed to defend, indemnify and hold Glacier Northwest harmless from and against any product liability claims related to the Cementaid products.

15. Glacier Northwest, by the filing and service of this Amended Complaint, hereby tenders a demand to Cementaid to honor its contractual obligation to indemnify Glacier Northwest.

16. Glacier Northwest has been required to retain counsel to defend the Webcor cross-complaint, the cost of which Glacier Northwest is informed and believes will exceed \$75,000, and such damages are continuing and increasing.

FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT

17. Plaintiff realleges and incorporates by reference, as though set forth in full, paragraphs 1 through 11 of this Amended Complaint.

18. Glacier Northwest has already incurred significant costs of defense in relation to *Millennium Tower Association v. Mission Street Development, LLC et al*, which defense costs are continuing. Glacier Northwest may also be obligated to pay the costs of a settlement or a judgment

19. Cementaid has failed and/or refused to acknowledge its obligation to indemnify Glacier Northwest, both for amounts already incurred and for amounts which will be incurred in the future.

20. There is an actual and present controversy between Glacier Northwest and Cementaid regarding the indemnification of Glacier Northwest under the terms of the Agreement such that this Court should issue a declaratory judgment in favor of Glacier Northwest, and against Cementaid, finding that Cementaid is obligated to defend and indemnify Glacier Northwest for the past, present and future costs of defense in the Millennium Tower Suit in addition to any amounts which Glacier Northwest is obligated to pay for a settlement or judgment.

SECOND CLAIM FOR RELIEF
BREACH OF CONTRACT

21. Plaintiff realleges and incorporates by reference, as though set forth in full, paragraphs 1 through 11 of this Amended Complaint.

22. Since as early as February 22, 2018 and thereafter, Cementaid has been in breach of the Agreement by failing and refusing, and continuing to fail and refuse, to pay Glacier Northwest for ongoing reasonable and necessary amounts incurred by Glacier Northwest in defense of the Millennium Tower Suit.

THIRD CLAIM FOR RELIEF

DECLARATORY JUDGMENT

23. Plaintiff realleges and incorporates by reference, as though set forth in full, paragraphs 1 through 6 and 12 through 16 of this Amended Complaint.

24. Glacier Northwest has already incurred costs of defense in relation to *Axis Homeowners Association v. Almaden Tower Venture, LLC et al*, which defense costs are continuing. Glacier Northwest may also be obligated to pay the costs of a settlement or a judgment

25. Cementaid has failed and/or refused to acknowledge its obligation to indemnify Glacier Northwest, both for amounts already incurred and for amounts which will be incurred in the future.

26. There is an actual and present controversy between Glacier Northwest and Cementaid regarding the indemnification of Glacier Northwest under the terms of the Agreement such that this Court should issue a declaratory judgment in favor of Glacier Northwest, and against Cementaid, finding that Cementaid is obligated to defend and indemnify Glacier Northwest for the past, present and future costs of defense in the Axis Suit in addition to any amounts which Glacier Northwest is obligated to pay for a settlement or judgment.

FOURTH CLAIM FOR RELIEF

BREACH OF CONTRACT

27. Plaintiff realleges and incorporates by reference, as though set forth in full, paragraphs 1 through 6 and 12 through 16 of this Amended Complaint.

28. Since as early as the date on which this Amended Complaint is being filed, and thereafter, Cementaid has been in breach of the Agreement by failing and refusing, and continuing to fail and refuse, to pay Glacier Northwest for ongoing

1 reasonable and necessary amounts incurred by Glacier Northwest in defense of the
2 Axis Suit.

3 WHEREFORE, Plaintiff prays for judgment as follows:

4 ON THE FIRST Claim for Relief:

5 1. For a Declaratory Judgment in favor of Plaintiff and against Defendant
6 on every issue properly brought before this Court.

7 2. Such other and further Declaratory Judgment as may appear proper at
8 the time of determination.

9 ON THE SECOND Claim for Relief:

10 3. For all amounts incurred by Plaintiff which amounts Defendant has
11 agreed to pay to or on behalf of Plaintiff under the Agreement.

12 4. For interest on sums which were not timely paid to Plaintiff.

13 5. For all other damages incurred by Plaintiff as a result of any breach of
14 contract.

15 ON ALL Causes of Action:

16 6. For interest on all sums where properly owed.

17 7. For costs of suit incurred herein.

18 8. For such other and further relief as the court may deem just.

19 DATED: June 7, 2018

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Attorneys for Plaintiff – Local Counsel

DEMAND FOR JURY TRIAL

Plaintiff Glacier Northwest hereby demands trial by jury as to each and every issue as to which it is entitled to demand a jury.

DATED: June 7, 2018

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